Cambridge Taxi Company *and* Peter S. Lowber.
Case 1-CA-17487

March 15, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on May 13, 1980, by Peter S. Lowber, herein called the Charging Party, and duly served on Cambridge Taxi Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1, issued a complaint and notice of hearing on January 22, 1981, alleging that Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, by refusing to honor the Charging Party's request for a work shift change, thus causing his termination, and by failing and refusing to reinstate the Charging Party to his former position upon his request, because of his activity on behalf of the Cambridge Cab Drivers Association and Local Union 496 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union.

On July 6, 1981, Respondent filed with the Board in Washington, D.C., a Motion for Summary Judgment and memorandum in support thereof. Subsequently, on July 16, 1981, the General Counsel filed a response and opposition to Respondent's motion. Thereafter, on September 18, 1981, the Board issued an order transferring proceeding to the Board and a Notice To Show Cause why Respondent's motion should not be granted. Thereafter, the General Counsel filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

On April 13, 1979, the Charging Party filed a charge against Respondent in Case 1-CA-15931, alleging that he was suspended for engaging in union activities. Following investigation of this charge, on January 10, 1980, the Regional Director for Region 1 issued a complaint. Thereafter, this case was consolidated with Cases 1-CA-15838 and 1-CA-17030, which involved separate charges filed by the Union against Respondent. After negotiations between the parties, on June 9, 1980, the Regional Director approved a settlement agreement for those consolidated cases.[1] Previously, on May 13, 1980, the Charging Party had filed the charge involved herein.

Respondent asserts in its Motion for Summary Judgment that the settlement agreement embraced all outstanding disputes between the parties, and that the General Counsel is precluded from litigating the instant charge since the charge was filed prior to execution of the settlement agreement. Respondent contends accordingly that there are no issues of fact or law requiring a hearing. The General Counsel argues in opposition that the settlement agreement does not in any way refer to the charge involved herein and that the parties did not intend to settle this charge but only to settle the charges specifically listed in the agreement. The General Counsel urges that the Charging Party should not be barred from pursuing this charge since he never intended to settle it.

We agree with Respondent. We have consistently held that a settlement agreement disposes of all issues involving presettlement conduct of the parties, unless prior violations of the Act were either unknown to the General Counsel and not readily discoverable by investigation, or specifically reserved from the settlement agreement by the mutual understanding of the parties.[2] Our previous decisions also indicate that, in order to prove that a charge has been specifically reserved from a settlement agreement, a party must establish this fact by affirmative evidence. The General Counsel does not deny that he was aware at the time of the settlement agreement that the Charging Party had filed the charge involved herein. Further, the General Counsel provides us with no evidence whatsoever that this charge was specifically reserved for future resolution.[3] Accordingly, we find that the settlement agreement approved by the Regional Director on June 9, 1980, embraced the charge involved in the instant case, and we grant Respondent's Motion for Summary Judgment.

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[1] The agreement was signed by Respondent on May 8, 1980, by the Charging Party on May 22, 1980, and by the Union on June 4, 1980. It provided, *inter alia*, for backpay to the Charging Party "for all monies lost as a result of his suspension."

[2] See, e.g., *Chauffeurs, Teamsters and Helpers Local Union 215, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (B & W Construction Company, a division of Babcock & Wilcox Company)*, 251 NLRB 1234 (1980); *Laminite Plastics Mfg. Corp.*, 238 NLRB 1234 (1978); *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397 (1978); *Steves Sash & Door Company*, 164 NLRB 468, 473 (1967).

[3] The General Counsel asks us to infer from the fact that the charge was not listed in the settlement agreement that it was specifically reserved for future resolution. Our dissenting colleague also contends, as he did in *Hollywood Roosevelt Hotel Co., supra*, that an act of omission may constitute specific reservation. We continue to reject this contention.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board grants Respondent's Motion for Summary Judgment and hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

MEMBER JENKINS, dissenting:

Contrary to my colleagues, I would deny Respondent's Motion for Summary Judgment. My colleagues find that a settlement agreement approved by the Regional Director on June 9, 1980, embraced the charge involved in the instant case. I disagree.

Case 1-CA-15931 was filed on April 13, 1979, by the Charging Party, and alleged that he was suspended for engaging in union activities. Case 1-CA-15838 was filed by Teamsters Local No. 496, alleging the discriminatory discharge of Anthony Violonto. A complaint was issued, the two cases being consolidated for hearing. On January 10, 1980, the Union filed a charge in Case 1-CA-17030 alleging certain unilateral actions in violation of Section 8(a)(1) and (5). An amended charge was filed and that proceeding was consolidated for hearing with the earlier cases.

Efforts were made to settle the cases and on May 8, 1980, Respondent's attorney signed a settlement agreement. The Charging Party signed the agreement on May 22, and the Union signed it on June 4. The agreement was approved by the Regional Director on June 9. The agreement listed the three charge numbers and specifically remedied the conduct alleged therein.

On May 13, 1980, the Charging Party filed the instant charge, alleging that he had been constructively discharged on March 28, 1980, when Respondent refused to honor his request for a shift change. Following an investigation, a complaint issued on January 22, 1981.

Respondent contends, and my colleagues agree, that the settlement agreement in the Cases 1-CA-15931, 1-CA-15838, and 1-CA-17030 embraced the charge in the instant case and the General Counsel is precluded from litigating the instant charge. My colleagues correctly state the general principle that "a settlement agreement disposes of all issues involving presettlement conduct of the parties, unless prior violations of the Act were either unknown to the General Counsel and not readily discoverable by investigation, or specifically reserved from the settlement agreement by the mutual understanding of the parties."

Applying that general principle to the instant case, there is not the slightest indication that the parties had the allegations of Case 1-CA-17487 in contemplation when they entered into the settlement agreement. That settlement agreement referred only to the three case numbers involved therein and provided a remedy limited to the allegations contained in those cases. The instant case contains an allegation unrelated to the consolidated settled case, and indeed the charge was not filed until after Respondent had signed the settlement agreement. At no point during the investigation of the instant case, did Respondent claim that the then-pending settlement agreement settled the present issue. Therefore, I am unwilling to stretch my imagination to find that the parties contemplated inclusion of the instant charge in their settlement of the earlier charges.

Neverthelesss, my colleagues state that the instant charge was not "specifically reserved" for future resolution and therefore must have been disposed of by the settlement agreement. The general principle relied on by the majority is intended to have all alleged violations litigated in one proceeding whenever practicable. However, this policy was not intended to be applied rigidly and without regard to the circumstances of each case. The cases relied on by the majority are, save one, quite distinguishable from the instant case.[4]

Steves Sash & Door Company, 164 NLRB 468 (1967), relied on by the majority is almost directly on point. There, as here, an earlier settlement agreement set forth specific charges and the notice remedied only those charges. There, as here, the settlement agreement recites that it is "in settlement of the above matter," i.e., Cases 1-CA-15931, 1-CA-15838, and 1-CA-17030. The settlement agreement here further provides "that approval of the Settlement Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) . . . *in this case*," and that, upon compliance, "no further action shall be taken *in this case* [emphasis supplied]." In the present case, it is reasonable to assume, as the Board did in *Steves Sash*, that, had the parties intended to resolve all differences between them, they would have provided for the withdrawal of the instant charge. No such provision was made in the settlement agreement and I find that the instant charge was indeed "specifically reserved" from the settlement agreement.

Based on the foregoing, I would find that the settlement agreement in Cases 1-CA-15931, 1-CA-15838, and 1-CA-17030 does not preclude litigation of the unrelated charge in the instant case. I dissent from my colleagues' decision to find otherwise.

[4] However see my dissent in *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397, 1398 (1978).